

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

Case No. 19-3435

CONSUMER FINANCIAL
PROTECTION BUREAU,
1700 G Street NW
Washington, DC 20552

OFFICE OF MANAGEMENT AND BUDGET,
725 17th Street NW
Washington, DC 20503

U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
200 Independence Avenue SW
Washington, DC 20201

CENTERS FOR MEDICARE &
MEDICAID SERVICES,
7500 Security Boulevard
Baltimore, MD 21244

U.S. DEPARTMENT OF STATE,
2201 C Street NW
Washington, DC 20520

and

U.S. DEPARTMENT OF AGRICULTURE,
1500 Pennsylvania Avenue NW
Washington, DC 20220

Defendants.

COMPLAINT

1. Plaintiff American Oversight brings this action against six executive branch agencies under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendants have failed to comply with the applicable time-limit provisions of the FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining Defendants from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information it gathers, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant Consumer Financial Protection Bureau (CFPB) is an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1) headquartered in Washington, DC. CFPB has possession, custody, and control of records that American Oversight seeks.

7. Defendant Office of Management and Budget (OMB) is an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1) headquartered in Washington, DC. OMB has possession, custody, and control of records that American Oversight seeks.

8. Defendant U.S. Department of Health and Human Services (HHS) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). HHS has possession, custody, and control of records that American Oversight seeks.

9. Defendant Centers for Medicare & Medicaid Services (CMS) is an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1) headquartered in Washington, DC. CMS has possession, custody, and control of records that American Oversight seeks.

10. Defendant U.S. Department of State (State) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). State has possession, custody, and control of records that American Oversight seeks.

11. Defendant U.S. Department of Agriculture (USDA) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). USDA has possession, custody, and control of records that American Oversight seeks.

STATEMENT OF FACTS

12. Between October 17, 2018 and June 12, 2019, American Oversight submitted FOIA requests to CFPB, OMB, CMS, State, and USDA seeking access to calendar entries maintained on behalf of certain named agency political appointees.

CFPB Calendars FOIA

13. On October 17, 2018, American Oversight submitted a FOIA request to CFPB seeking the following records:

1. All calendars or calendar entries for any of the following individuals, including any calendars maintained on behalf of these individuals (e.g., by an administrative assistant):

- Mick Mulvaney
- Brian Johnson
- Kirsten Sutton Mork

For these individuals, American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments.

2. All calendars or calendar entries for any of the following individuals, including any calendars maintained on behalf of these individuals (e.g., by an administrative assistant):

- Tom Pahl
- John Czwartacki
- Sheila Greenwood
- Eric Blankenstein
- Anyone who has served as White House Liaison since January 20, 2017

For these individuals, American Oversight does not need the records to be produced in a format that includes all invitees, notes, and attachments. Rather, American Oversight seeks only a format that includes dates, times, and meeting titles, such as the “Daily” format used by Microsoft Outlook or a similar format.

Please provide all responsive records from the date each custodian joined CFPB through the date the search is conducted.

Please do not limit your search to Outlook calendars. We request the production of any document—paper or electronic, whether on government-issued or personal devices—used to track or

coordinate how these individuals allocate their time on agency business.

14. By a letter dated October 29, 2018, CFPB acknowledged American Oversight's CFPB Calendars FOIA and assigned it the tracking number #BCFP-2019-0042-F.

15. By a letter dated November 8, 2018, CFPB provided a second acknowledgment of American Oversight's CFPB Calendars FOIA, but this time it referenced the tracking number #BCFP-2019-0040-F.

16. American Oversight has not received any further communications from CFPB regarding this FOIA request.

OMB Calendars FOIA

17. On October 17, 2018, American Oversight submitted a FOIA request to OMB seeking the following records:

1. All calendars or calendar entries for any of the following individuals, including any calendars maintained on behalf of these individuals (e.g., by an administrative assistant):

- Emma Doyle
- Jessica Anderson
- Mick Mulvaney
- Russell Vought
- Neomi Rao

For these individuals, American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments.

2. All calendars or calendar entries for any of the following individuals, including any calendars maintained on behalf of these individuals (e.g., by an administrative assistant):

- Jeffrey Freeland
- Joseph Grogan
- Daniel Hanlon
- Rosario Anthony Palmieri
- Jeffrey Schlagenhauf
- Jonathan Slemrod
- Peter Warren
- John Czwartacki

For these individuals, American Oversight does not need the records to be produced in a format that includes all invitees, notes, and attachments. Rather, American Oversight seeks only a format that includes dates, times, and meeting titles, such as the “Daily” format used by Microsoft Outlook or a similar format.

Please provide all responsive records from the date each custodian joined OMB through the date the search is conducted.

Please do not limit your search to Outlook calendars. We request the production of any document—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business

18. By an email sent October 18, 2018, OMB acknowledged American Oversight’s OMB Calendars FOIA and assigned it the tracking number 2019-028.

19. American Oversight has not received any further communications from OMB regarding this FOIA request.

CMS Calendars FOIA

20. On October 17, 2018, American Oversight submitted a FOIA request to CMS seeking the following records:

All calendars or calendar entries for any of the following individuals, including any calendars maintained on behalf of these individuals (e.g., by an administrative assistant):

- Seema Verma
- Brady Brookes
- Mia Palmieri Heck

For these individuals, American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments.

Please provide all responsive records from the date each custodian joined CMS through the date the search is conducted.

Please do not limit your search to Outlook calendars. We request the production of any document—paper or electronic, whether on government-issued or personal devices—used to track or

coordinate how these individuals allocate their time on agency business.

21. By a letter dated October 26, 2018, CMS acknowledged American Oversight's CMS Calendars FOIA and assigned it the Control Number 102220187012 and the PIN LB74.

22. By a letter dated November 7, 2018, CMS stated that the portion of American Oversight's CMS Calendars FOIA seeking "all calendars or calendar entries for Mia Palmieri Heck" was referred to the HHS FOIA Office and will be responded to by the OS FOIA/Privacy Acts Division.

23. American Oversight has not received any further communications from CMS or HHS regarding this FOIA request.

State Ambassador Calendars FOIA

24. On March 20, 2019, American Oversight submitted a FOIA request to State seeking the following records:

All calendars or calendar entries for any of the following individuals, including any calendars maintained on behalf of these individuals (e.g., by an administrative assistant):

- Robin Bernstein, U.S. Ambassador to the Dominican Republic
- Sam Brownback, U.S. Ambassador-at-Large for International Religious Freedom
- David Cornstein, U.S. Ambassador to Hungary
- Kelly Craft, U.S. Ambassador to Canada
- Callista Gingrich, U.S. Ambassador to the Holy See
- Richard Grennell, U.S. Ambassador to Germany
- William Hagerty, U.S. Ambassador to Japan
- Pete Hoekstra, U.S. Ambassador to the Netherlands
- Woody Johnson, U.S. Ambassador to the United Kingdom
- Jamie McCourt, U.S. Ambassador to the French Republic and Principality of Monaco

American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments. American Oversight is amenable to receiving the calendars in the "intermediate" format in which it is currently receiving State

calendars in the litigation styled *American Oversight v. U.S. Dep't of Commerce et al.*, 18-cv-534 (D.D.C.).

Please provide all responsive records from the date each individual joined State through the date the search is conducted.

Please do not limit your search to Outlook calendars. We request the production of any document—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.

25. By a letter dated August 26, 2019, State acknowledged American Oversight's State Ambassador Calendars FOIA and assigned it the tracking number F-2019-04365.

26. American Oversight has not received any further communications from State regarding this FOIA request.

USDA Rural Development Calendars FOIA

27. On June 12, 2019, American Oversight submitted a FOIA request to USDA's Rural Development Office seeking the following records:

All calendars or calendar entries for any of the following individuals, including any calendars maintained on behalf of these individuals (e.g., by an administrative assistant) for the date ranges provided below:

- Anne Hazlett (June 12, 2017, through February 7, 2019)
- Joel Baxley (February 7, 2019, through the date of the search)

For these individuals, American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments.

Please do not limit your search to Outlook calendars. We request the production of any document—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.

28. To American Oversight's knowledge, USDA has not assigned American Oversight's USDA Rural Development Calendars FOIA a tracking number.

29. American Oversight has received no communication from USDA regarding the processing of this FOIA request.

Exhaustion of Administrative Remedies

30. As of the date of this Complaint, Defendants have failed to (a) notify American Oversight of a final determination regarding the requests, including the full scope of any responsive records Defendants intend to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

31. Through Defendants' failure to respond to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Searches for Records

32. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

33. American Oversight properly requested records within the possession, custody, and control of Defendants.

34. Defendants are subject to FOIA, and they must therefore make reasonable efforts to search for requested records.

35. Defendants have failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA requests.

36. Defendants' failure to conduct adequate searches for responsive records violates FOIA and agency regulations.

37. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendants to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA requests.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

38. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

39. American Oversight properly requested records within the possession, custody, and control of Defendants.

40. Defendants are subject to FOIA, and they must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

41. Defendants are wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce non-exempt records responsive to its FOIA requests.

42. Defendants are wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA requests.

43. Defendants' failure to provide all non-exempt responsive records violates FOIA and agency regulations.

44. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendants to promptly produce all non-exempt records responsive to its FOIA

requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendants to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA requests;
- (2) Order Defendants to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (4) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant American Oversight such other relief as the Court deems just and proper.

Dated: November 14, 2019

Respectfully submitted,

/s/ Christine H. Monahan

Christine H. Monahan

D.C. Bar No. 1035590

/s/ Hart W. Wood

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